

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/664,273
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Applicant : George D. Hermann et al.
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Examiner : Melissa K. Ryckman
Docket No. : 06-516 US
Customer No. : 34704

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

APPEAL BRIEF

Dear Sir:

This brief is submitted following the notice of appeal
filed on July 29, 2011.

10/664,273
Appeal Brief
November 3, 2011

(i) Real Party in Interest

The Real Party in Interest is the Assignee of Record,
namely, Vitalitec International, Inc.

10/664,273
Appeal Brief
November 3, 2011

(ii) Related Appeals and Interferences

There are no known related appeals or interferences.

(iii) Status of Claims

The application as pending contains claims 1-54. Of these, claims 1-3, 5-21, 23-49 and 51-54 are rejected and are on appeal. Claim 4 has been withdrawn from consideration as drawn to a non-elected species. Claim 22 has been withdrawn from consideration as drawn to a non-elected species. Claim 50 has been cancelled during prosecution.

(iv) Status of Amendments

There were no amendments filed after the final rejection from which appeal is taken. Thus, the claims as pending are the claims as listed in the response which was filed on November 23, 2010. These claims are also set forth in the following Claims Appendix.

7(v) Summary of Claimed Subject Matter

The claims on appeal include independent claims 1, 12, 13, 19, 30, 32, 48 and 49. These claims are summarized as follows:

Claim 1 is summarized as follows:

1. An insert (specification, paragraph [0030], lines 1-5, element 404 and in Fig 4A, element 602 in Fig. 6A, insert 702, Fig. 7A, insert 802, Fig. 8A, and also Figs. 9A-D) for attachment to a jaw-type surgical instrument adapted for grasping or occluding a vessel, said insert comprising an elongate member (402, Fig. 4A) having opposed proximal and distal ends (evident from Figs. 4A-B through Figs. 8A-B), a compliant cushion (specification paragraph [0012], lines 1-4) having a tissue-engaging contact surface and having a plurality of molded, hooked traction elements (specification, paragraph [0013], lines 1-6) on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (shown in Fig. 1A), said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface (Figs. 9A-D), wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example).

Claim 12 is summarized as follows:

12. An insert (specification, paragraph [0030], lines 1-5, element 404 and in Fig 4A, element 602 in Fig. 6A, insert 702, Fig. 7A, insert 802, Fig. 8A, and also in Figs. 9A-D) for attachment to a jaw-type surgical instrument adapted for

grasping or occluding a vessel, said insert comprising an elongate member (402, Fig. 4A) having opposed proximal and distal ends (evident from Figs. 4A-B through Figs. 8A-B), a compliant cushion (specification paragraph [0012], lines 1-4) having a tissue-engaging contact surface and having a plurality of molded, twin-crooked traction elements (Element 106, specification paragraph [0035], lines 1-4. Fig. 10) on at least a region of said surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface, (Figs. 9A-D) wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example), wherein said traction elements are not more than about 0.4 mm in height (specification paragraph [0033] line 4) and have a density on said surface region of at least about 130/cm² (specification paragraph [0034], lines 6-9).

Claim 13 is summarized as follows:

13. An insert (specification, paragraph [0030], lines 1-5, element 404 and in Fig 4A, element 602 in Fig. 6A, insert 702, Fig. 7A, insert 802, Fig. 8A, and also in Figs. 9A-D) for attachment to a jaw-type surgical instrument adapted for grasping or occluding a vessel, said insert comprising an elongate member (402, Fig. 4A) having opposed proximal and distal ends (evident from Figs. 4A-B through Figs. 8A-B), a compliant cushion (specification paragraph [0012], lines 1-4) having a tissue-engaging contact surface and having a plurality of molded, single-crooked traction elements (Element 205, Fig. 2A, specification paragraph [0036], lines 3-4) on at least a region of said surface, said insert further comprising a back

surface opposite to said contact surface, and a jaw attachment member on the back surface (Figs. 9A-D), wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example), wherein said traction elements are not more than about 0.3 mm in height and have a density on said surface region of at least about 260/cm² (specification paragraph [0033] line 4).

Claim 19 is summarized as follows:

19. A surgical instrument comprising at least one jaw and an insert (specification, paragraph [0030], lines 1-5, element 404 and in Fig 4A, element 602 in Fig. 6A, insert 702, Fig. 7A, insert 802, Fig. 8A, and also in Figs. 9A-D) attached to the jaw, the insert comprising an elongate member (402, Fig. 4A) having opposed proximal and distal ends (evident from Figs. 4A-B through Figs. 8A-B), a compliant clamping surface (specification paragraph [0012], lines 1-4) adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements (specification, paragraph [0013], lines 1-6) on at least a region of said surface, and the hooked traction elements being of unitary construction with the clamping surface (shown in Fig. 1A), said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface (Figs. 9A-D), wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example).

Claim 30 is summarized as follows:

30. A surgical clamp comprising at least one jaw comprising an elongate member having opposed proximal and distal ends, a compliant cushion (specification paragraph [0012], lines 1-4) having a tissue-engaging contact surface and a plurality of molded, hooked traction elements (specification, paragraph [0013], lines 1-6) located on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (See Fig. 1A), said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface (Figs. 9A-D), wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example) and wherein a tractive force of between about 4 to about 10 pounds is provided on a vessel clamped by the clamp (see specification, paragraph [0016], lines 1-2).

Claim 32 is summarized as follows:

32. A surgical clip (see specification paragraph [0011], invention relates equally to clamps) comprising at least one jaw comprising an elongate member having opposed proximal and distal ends, a compliant cushion (specification paragraph [0012], lines 1-4) having a tissue-engaging contact surface and a plurality of molded, hooked traction elements (specification, paragraph [0013], lines 1-6) located on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (shown in Fig. 1A), said insert further comprising a back surface opposite

to said contact surface, and a jaw attachment member on the back surface (Figs. 9A-D), wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example) and wherein a tractive force of between about 1.5 to about 2.5 pounds is provided on a vessel clamped by the clip (see specification paragraph [0016], line 3) .

Claim 48 is summarized as follows:

48. A method of occluding a vessel or other body conduit comprising the steps of: (a) providing a jaw-type surgical instrument comprising at least one jaw and an insert attached to the jaw, the insert (specification, paragraph [0030], lines 1-5, element 404 and in Fig 4A, element 602 in Fig. 6A, insert 702, Fig. 7A, insert 802, Fig. 8A, and also in Figs. 9A-D) comprising an elongate member (402, Fig. 4A) having opposed proximal and distal ends (evident from Figs. 4A-B through Figs. 8A-B), a compliant clamping surface (specification paragraph [0012], lines 1-4) adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements (specification, paragraph [0013], lines 1-6) on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said clamping surface (shown in Fig. 1A), said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface (Figs. 9A-D), wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example); (b) contacting said clamping surface with a vessel or other body conduit; and (c) actuating said

instrument to occlude said vessel or other body conduit.

Claim 49 is summarized as follows:

49. A method of grasping tissue comprising the steps of: (a) providing a jaw-type surgical instrument comprising at least one jaw and an insert attached to the jaw, the insert (specification, paragraph [0030], lines 1-5, element 404 and in Fig 4A, element 602 in Fig. 6A, insert 702, Fig. 7A, insert 802, Fig. 8A, and also in Figs. 9A-D) comprising an elongate member (402, Fig. 4A) having opposed proximal and distal ends (evident from Figs. 4A-B through Figs. 8A-B), a compliant clamping surface (specification paragraph [0012], lines 1-4) adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements (specification, paragraph [0013], lines 1-6) on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said contact surface (shown in Fig. 1A), said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface(Figs. 9A-D), wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions (shown in Figs. 4A-B, for example); (b) contacting said clamping surface with tissue; and (c) actuating said instrument to grasp said tissue.

(vi) Grounds of Rejection to be Reviewed on Appeal

There are four grounds of rejection recited in the final action from which appeal is taken, and each of these grounds of rejection is to be reviewed on appeal. Thus, the grounds of rejection on appeal are as follows:

Ground 1 - Whether claims 1-3, 15-19, 30-33, 48, 49 and 51-53 are obvious over US Patent No. 6,228,104 to Fogarty (hereafter "Fogarty") in view of US Patent No. 5,893,878 to Pierce (hereafter "Pierce")

Ground 2 - Whether claims 5-7, 23-25, and 42-47 are obvious over Fogarty and Pierce, and further in view of US Patent No. 2,706,987 to Bramstedt (hereafter "Bramstedt").

Ground 3 - Whether claims 8-14, 26-29, and 34-41 are obvious over Fogarty, Pierce, Bramstedt and US Patent No. 6,484,371 to Romanko et al. (hereafter "Romanko").

Ground 4 - Whether claim 54, is obvious over Fogarty, Pierce and Romanko.

(vii) Argument

Ground 1 - Whether claims 1-3, 15-19, 30-33, 48, 49 and 51-53 are obvious over US Patent No. 6,228,104 to Fogarty (hereafter "Fogarty") in view of US Patent No. 5,893,878 to Pierce (hereafter "Pierce").

Claims 1-3, 15-19, 30-33, 48, 49 and 51-53 were rejected based upon Fogarty in view of Pierce. This combination of art is used to reject independent claims 1, 19, 30, 32, 48 and 49. Each of these claims recite, among other things, that the insert has hooked traction elements.

In making this rejection, the Examiner has acknowledged that the cited Fogarty patent does not disclose hooked elements. This is clear from a consideration of Fogarty which shows a pad 80 with pyramid shaped teeth that are not hooked in any sense. This subject matter according to the rejection comes from Pierce.

First, it is submitted that the structures shown in Pierce at 24 and 80 in Figure 13 (referred to in the rejection) are not hooks as called for in the present application. Rather, 24 is a point of material which is raised up out of the base material, leaving the underlying depression 80 as shown. (See Pierce, col. 6, lines 3-19) None of these structures is a hook as called for in the present claims. There is a structural difference between a projection and a hook.

Second, even if the structures 24, 80 of Pierce were considered to be hooks, the structure of the device taught by Pierce are sufficiently different from that of Fogarty that a person skilled in the art would not consider combining them. This is because Fogarty already discloses a textured surface,

and there is no need to look for a hook structure such as what is said to be taught in Pierce for incorporation into Fogarty.

Fogarty already has a textured surface and clearly discloses to a person skilled in the art how such a surface is formed, as illustrated in Figures 10-12. Obviously this is an injection molded surface, and is made the way it is made for a reason. It is not clear how this would be substituted for the structurally or mechanically gouged surface disclosed in Pierce. Thus, in order to make this combination, the person skilled in the art would need to completely ignore the teachings in Fogarty as to how to make the contact surface and instead make a smooth surface and then subject that surface to the gouging disclosed by Pierce. This is a complex series of steps to engage in given that there is no suggestion in either document to do so. Taking each reference for all that it fairly teaches, the combination of art does not make logical sense.

Further, it is submitted that a cursory review of Fogarty and Pierce would show them to be sufficiently different devices that a person skilled in the art would not expect interchangeable features between them. This is particularly true with respect to the surface points of the jaws in Pierce and the pads in Fogarty, which could not be treated in the same manner as the jaws in Pierce in order to define the points in question.

Based upon the foregoing, it is respectfully submitted that the rejection of record is in error with respect to each of independent claims 1, 19, 30, 32, 48 and 49, and should be reversed.

Still in this ground of rejection, dependent claim 3 calls for the hooks to have two crooks. This is different from what is shown at 24 and 80 in Pierce, which are separate structures

as opposed to one hook having two crooks. Claim 3 is therefore believed to further define over the art of record.

Turning to claims 52 and 53, these claims call for overmolds that are not shown in Fogarty, and further still nothing calls for the claimed difference in Shore A between the first and second overmolds. Based upon the above, it is believed that the secondary rejection is in error and should be reversed.

Ground 2 - Whether claims 5-7, 23-25, and 42-47 are obvious over Fogarty and Pierce, and further in view of US Patent No. 2,706,987 to Bramstedt (hereafter "Bramstedt").

All claims in this ground of rejection depend directly or indirectly from one of the independent claims discussed with above with respect to Ground 1. Thus, this ground of rejection is believed to be in error based upon the discussion set forth above.

Each of the claims recited in this ground of rejection deals with specific preferred ranges of sizes for the hooked traction elements from the independent claims to which they depend. The examiner has relied upon the teachings of Bramstedt (US2,706,987) in this rejection, and while Bramstedt does teach an inset for a surgical needle clamp and does mention numbers which fit in the ranges of the claims, this is the end of the similarity of Bramstedt with the other cited art and also with the present invention.

Bramstedt deals with a much earlier generation of technology drawn to a clamp for holding surgical needles. The disclosure deals with making inserts for this clamp to properly hold a surgical needle, and the inventor discusses the hardness of the teeth as being an important point and refers to needing a

hardening of the material above a Rockwell hardness of 53. See Bramstedt, col. 1, lines 36-46. This is clearly a significantly different subject matter from the field of endeavor of the present invention and also of Fogarty and Peirce, and it is respectfully submitted that a person skilled in the art that would not consider the teachings of Bramstedt as relevant to the subject matter of the claimed invention having a compliant cushion having tissue-engaging contact surfaces, which is dramatically different from Bramstedt. Based upon the foregoing, it is believed that this ground of rejection is flawed with respect to the arguments above related to the independent claims and also with respect to the subject matter of the dependent claims as discussed above. This ground of rejection should be reversed.

Ground 3 - Whether claims 8-14, 26-29, and 34-41 are obvious over Fogarty, Pierce, Bramstedt and US Patent No. 6,484,371 to Romanko et al. (hereafter "Romanko").

This ground of rejection deals with a series of claims which add to the general subject matter with respect to Ground 1, a series of preferred ranges of density of the traction element on the surface region. In this ground of rejection, the Examiner has added Romanko (US6,484,371). Romanko deals with hook and loop bundling straps, and from a general review of the document, it should be clear that Romanko is not particularly pertinent to the subject invention, for example, because the structures are designed as hook and loop fasteners and not as tissue clamping structures. Thus, it would not be clear to a person skilled in the art that such teachings should be considered. Discussion of typical "velcro" materials is

contained in the present specification, see for example paragraph [0031] and recites a long series of reasons why the subject matter is in fact different from such hook and loop fasteners. Based upon the foregoing, it is respectfully submitted that reliance upon Romanko in this ground of rejection is in error, and therefore that the rejection of the claims recited in this ground of rejection should be reversed.

Ground 4 - Whether claim 54, is obvious over Fogarty, Pierce and Romanko.

This ground of rejection deals specifically with dependent claim 54, which recites that the traction elements have two crooks which extend from the same stem of a hook. The examiner has agreed that this structure is not disclosed or suggested in Fogarty or Pierce and has cited Romanko for teaching this subject matter. As set forth above, Romanko is not pertinent prior art and does not fairly disclose or suggest to a person skilled in the art to take the subject matter of dependent claim 54 in combination of independent claim 1.

This ground of rejection is therefore in error and should be reversed.

(viii) Claims Appendix

1. (Rejected and on appeal) An insert for attachment to a jaw-type surgical instrument adapted for grasping or occluding a vessel, said insert comprising an elongate member having opposed proximal and distal ends, a compliant cushion having a tissue-engaging contact surface and having a plurality of molded, hooked traction elements on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions.
2. (Rejected and on appeal) The insert of claim 1 wherein said molded, hooked traction elements are configured to have at least one crook.
3. (Rejected and on appeal) The insert of claim 1 wherein said molded, hooked traction elements are configured to have at least two crooks.
4. (Withdrawn) The insert of claim 1 wherein said molded, hooked traction elements are configured to have a mushroom-like shape.
5. (Rejected and on appeal) An insert according to claim 1, wherein said molded, hooked traction elements are not more than about 1 mm in height.

6. (Rejected and on appeal) The insert of claim 5 wherein said molded, hooked traction elements are not more than about 0.5 mm in height.

7. (Rejected and on appeal) The insert of claim 5 wherein said molded, hooked traction elements are not more than about 0.3 mm in height.

8. (Rejected and on appeal) The insert of claim 5 wherein the density of said molded, hooked traction elements on said surface region is at least about $100/\text{cm}^2$.

9. (Rejected and on appeal) The insert of claim 5 wherein the density of said molded, hooked traction elements on said surface region is at least about $130/\text{cm}^2$.

10. (Rejected and on appeal) The insert of claim 5 wherein the density of said molded, hooked traction elements on said surface region is at least about $260/\text{cm}^2$.

11. (Rejected and on appeal) The insert of claim 5 wherein the density of said molded, hooked traction elements on said surface region is at least about $300/\text{cm}^2$.

12. (Rejected and on appeal) An insert for attachment to a jaw-type surgical instrument adapted for grasping or occluding a vessel, said insert comprising an elongate member having opposed proximal and distal ends, a compliant cushion having a tissue-engaging contact surface and having a plurality of molded, twin-crooked traction elements on at least a region of said surface, said insert further comprising a back surface opposite to said

contact surface, and a jaw attachment member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions, wherein said traction elements are not more than about 0.4 mm in height and have a density on said surface region of at least about $130/\text{cm}^2$.

13. (Rejected and on appeal) An insert for attachment to a jaw-type surgical instrument adapted for grasping or occluding a vessel, said insert comprising an elongate member having opposed proximal and distal ends, a compliant cushion having a tissue-engaging contact surface and having a plurality of molded, single-crooked traction elements on at least a region of said surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions, wherein said traction elements are not more than about 0.3 mm in height and have a density on said surface region of at least about $260/\text{cm}^2$.

14. (Rejected and on appeal) An insert according to claim 22, wherein said traction elements are not more than about 0.3 mm in height and have a density on said surface region of at least about $300/\text{cm}^2$.

15. (Rejected and on appeal) An insert according to claim 1 wherein when said insert is attached to said jaw, a tractive force of between about 4 to about 10 pounds is provided on a vessel clamped by the clamp.

16. (Rejected and on appeal) The insert of claim 15 wherein said tractive force is between about 6 to about 8 pounds.

17. (Rejected and on appeal) An insert according to claim 1 wherein when said insert is attached to said jaw, a tractive force of between about 1.5 to about 2.5 pounds is provided on a vessel clamped by the clip.

18. (Rejected and on appeal) The insert of claim 17 wherein said tractive force is between about 1.5 to about 2 pounds.

19. (Rejected and on appeal) A surgical instrument comprising at least one jaw and an insert attached to the jaw, the insert comprising an elongate member having opposed proximal and distal ends, a compliant clamping surface adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements on at least a region of said surface, and the hooked traction elements being of unitary construction with the clamping surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions.

20. (Rejected and on appeal) The surgical instrument of claim 19 wherein said molded, hooked traction elements are configured to have at least one crook.

21. (Rejected and on appeal) The surgical instrument of claim 19 wherein said molded, hooked traction elements are configured to have at least two crooks.

22. (Withdrawn) The surgical instrument of claim 19 wherein said molded, hooked traction elements are configured to have a mushroom-like shape.

23. (Rejected and on appeal) A surgical instrument according to claim 19, wherein said molded, hooked traction elements are not more than about 1 mm in height.

24. (Rejected and on appeal) The surgical instrument of claim 23 wherein said molded, hooked traction elements are not more than about 0.5 mm in height.

25. (Rejected and on appeal) The surgical instrument of claim 23 wherein said molded, hooked traction elements are not more than about 0.3 mm in height.

26. (Rejected and on appeal) The surgical instrument of claim 23 wherein the density of said molded, hooked traction elements on said surface region is at least about 100/cm².

27. (Rejected and on appeal) The surgical instrument of claim 23 wherein the density of said molded, hooked traction elements on said surface region is at least about 130/cm².

28. (Rejected and on appeal) The surgical instrument of claim 23 wherein the density of said molded, hooked traction elements on said surface region is at least about 260/cm².

29. (Rejected and on appeal) The surgical instrument of claim 23 wherein the density of said molded, hooked traction elements on

said surface region is at least about $300/\text{cm}^2$.

30. (Rejected and on appeal) A surgical clamp comprising at least one jaw comprising an elongate member having opposed proximal and distal ends, a compliant cushion having a tissue-engaging contact surface and a plurality of molded, hooked traction elements located on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions and wherein a tractive force of between about 4 to about 10 pounds is provided on a vessel clamped by the clamp.

31. (Rejected and on appeal) The surgical clamp of claim 30 wherein said tractive force is between about 6 to about 8 pounds.

32. (Rejected and on appeal) A surgical clip comprising at least one jaw comprising an elongate member having opposed proximal and distal ends, a compliant cushion having a tissue-engaging contact surface and a plurality of molded, hooked traction elements located on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface, wherein said contact surface and said back surface extend between said

opposed proximal and distal ends and face opposite directions and wherein a tractive force of between about 1.5 to about 2.5 pounds is provided on a vessel clamped by the clip.

33. (Rejected and on appeal) The surgical clip of claim 32 wherein said tractive force is between about 1.5 to about 2 pounds.

34. (Rejected and on appeal) An insert according to claim 1, wherein said hooked traction elements are on at least a region of said surface at a density on said surface region of at least about 100/cm².

35. (Rejected and on appeal) The insert of claim 34 wherein the density of said hooked traction elements on said surface region is at least about 130/cm².

36. (Rejected and on appeal) The insert of claim 34 wherein the density of said hooked traction elements on said surface region is at least about 260/cm².

37. (Rejected and on appeal) The insert of claim 34 wherein the density of said hooked traction elements on said surface region is at least about 300/cm².

38. (Rejected and on appeal) A surgical instrument according to claim 19, wherein the plurality of hooked traction elements are on at least a region of said surface at a density on said surface region of at least about 100/cm².

39. (Rejected and on appeal) The surgical instrument of claim 38

wherein the density of said hooked traction elements on said surface region is at least about $130/\text{cm}^2$.

40. (Rejected and on appeal) The surgical instrument of claim 38 wherein the density of said hooked traction elements on said surface region is at least about $260/\text{cm}^2$.

41. (Rejected and on appeal) The surgical instrument of claim 38 wherein the density of said hooked traction elements on said surface region is at least about $300/\text{cm}^2$.

42. (Rejected and on appeal) An insert according to claim 1, wherein said traction elements are not more than 1 mm in height.

43. (Rejected and on appeal) The insert of claim 42 wherein said hooked traction elements are not more than about 0.5 mm in height.

44. (Rejected and on appeal) The insert of claim 42 wherein said hooked traction elements are not more than about 0.3 mm in height.

45. (Rejected and on appeal) A surgical instrument according to claim 19, wherein said traction elements are not more than 1 mm in height.

46. (Rejected and on appeal) The surgical instrument of claim 45 wherein said hooked traction elements are not more than about 0.5 mm in height.

47. (Rejected and on appeal) The surgical instrument of claim 45

wherein said hooked traction elements are not more than about 0.3 mm in height.

48. (Rejected and on appeal) A method of occluding a vessel or other body conduit comprising the steps of: (a) providing a jaw-type surgical instrument comprising at least one jaw and an insert attached to the jaw, the insert comprising an elongate member having opposed proximal and distal ends, a compliant clamping surface adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said clamping surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions; (b) contacting said clamping surface with a vessel or other body conduit; and (c) actuating said instrument to occlude said vessel or other body conduit.

49. (Rejected and on appeal) A method of grasping tissue comprising the steps of: (a) providing a jaw-type surgical instrument comprising at least one jaw and an insert attached to the jaw, the insert comprising an elongate member having opposed proximal and distal ends, a compliant clamping surface adapted for grasping or occluding a vessel, the clamping surface having a plurality of molded, hooked traction elements on at least a region of said surface, wherein said hooked traction elements are of unitary construction with said contact surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment member on the back

surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions; (b) contacting said clamping surface with tissue; and (c) actuating said instrument to grasp said tissue.

50. (Cancelled)

51. (Rejected and on appeal) The insert of claim 1, wherein said insert comprises an overmold having first side and a second side opposite from said first side, and wherein said compliant cushion is fixed to said first side of said overmold and said jaw attachment member is fixed to said second side of said overmold.

52. (Rejected and on appeal) The insert of claim 1, wherein said insert comprises a first overmold and a second overmold together defining a first side and a second side opposite from said first side, wherein said compliant cushion is fixed to said first side and said jaw attachment member is fixed to said second side, and wherein said second overmold is made from an elastomer having a shore durometer rating of between about 2A and about 95A, and wherein said first overmold is made from an elastomer having a shore durometer rating of between about 20A and about 95A, and wherein said first overmold is more rigid than said second overmold.

53. (Rejected and on appeal) The insert of claim 52, wherein said second overmold defines said first side and said first overmold defines said second side, and wherein said jaw attachment member extends from said first overmold at said second side.

54. (Rejected and on appeal) The insert of claim 3, wherein each hook comprises a single stem extending from said tissue-engaging contact surface, and wherein said two crooks extend in opposite directions from said single stem.

10/664,273
Appeal Brief
November 3, 2011

(ix) Evidence Appendix

There is no separate evidence appendix.

10/664,273
Appeal Brief
November 3, 2011

(x) Related Proceedings Appendix

There are no known proceedings and therefore no appendix.

Conclusion and Signature

Based upon the foregoing, it is respectfully submitted that the rejections of all pending claims are in error and should be reversed. This paper is accompanied by authorization to charge a deposit account for a one month extension of time and the fee for filing an Appeal Brief. It is believed that no additional fee is due in connection with this paper. If any fee is due, please charge same to Deposit Account 02-0184.

Respectfully submitted,
George D. Hermann et al.

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